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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/084,820

02/27/2002

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25814-404980

8636

27717 7590 12/27/2010
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EXAMINER

COBURN, CORBETT B

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

12/27/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHAUNCEY W. GRISWOLD

Appeal 2009-008354
Application 10/084,820
Technology Center 3700

Before JENNIFER D. BAHR, STEFAN STAICOVICI, and KEN B.
BARRETT, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Chauncey W. Griswold (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 3, 4, 6-8, 19-22, 26, and 31-42. Claims 1, 2, 5, 9-18, 23-25, and 27-30 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM-IN-PART.

THE INVENTION

Claim 31, reproduced below, is representative of the subject matter on appeal.

31. The method of activating a gaming machine by an individual player for subsequent play, which comprises:
- displaying to said gaming machine, without physical contact with said gaming machine, a card carried by the player;
 - said card comprising suitable electronics for data transmission;
 - causing wireless transfer of first individualized data concerning the player from the card to the gaming machine or to a computer network that is associated with said gaming machine;
 - evaluating said data against a stored database;
 - upon favorable evaluation of said data, said gaming machine providing a personalized greeting to the player;
 - providing biometric sensing as separate, personal identification to the gaming machine;
 - evaluating said biometric sensing;
 - activating said gaming machine for said subsequent play upon favorable evaluation of said data and said sensing;
 - during or after said subsequent play, causing wireless transfer of second, individualized data back to the card to be stored.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Raven	US 5,429,361	Jul. 4, 1995
Walker	US 6,110,041	Aug. 29, 2000
Werb	US 6,150,921	Nov. 21, 2000
Orus	US 2002/0047044 A1	Apr. 25, 2002

Press Release, Phillips Semiconductors, Leading-edge smart card technology meets smartest watch technology (Aug. 29, 2000) (hereinafter “Phillips Semiconductor”)

Wikipedia Article, Biometrics (date visited unknown)

The following Examiner’s rejections are before us for review:

1. Claims 3, 4, 6-8, 19, 20, 26, 31-37, and 40-42 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Walker, Raven, and Orus; and
2. Claims 21, 22, 38, and 39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Walker, Raven, Orus, and Phillips Semiconductors.

ANALYSIS

The rejection of claims 3, 4, 6-8, 19, 20, 26, 31-37, and 40-42 as being unpatentable over Walker, Raven, and Orus

Claim 31

Appellant argues claims 4, 6-8, 19, 20, 26 and 31 as a group. App. Br. 5. We select independent claim 31 as the representative claim, and claims 4, 6-8, 19, 20, 26 stand or fall with claim 31. 37 C.F.R. § 41.37(c)(1)(vii).

Claim 31 pertains to a method for activating a gaming machine involving the use of both a non-contact card and biometric sensing. The claim also recites the step: “upon favorable evaluation of said data [concerning the player], said gaming machine providing a personalized greeting to the player.” The Examiner relies on Walker for the disclosure of the use of a contact-type player tracking card and the use of biometrics for a gaming machine, Raven for the disclosure of a gaming machine providing a personalized greeting based on smart card data, and Orus for the use of contactless gaming cards. Ans. 3-7.

We are not persuaded of error by Appellant’s apparent argument (App. Br. 5, 6; Reply Br. 2) that no single cited reference discloses the use of both a non-contact card and biometric identification. “Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.” *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)). Similarly, we are not persuaded by the argument that the prior art fails to disclose a personalized greeting based on data from a wireless card rather than a non-contact card. *Contra* App. Br. 7.

We also are not persuaded by Appellant’s argument that Walker teaches away from the use of both a card and biometrics. *Contra* App. Br. 67 (quoting Walker, col. 6, ll. 47-61). While Appellant may be correct in asserting that Walker discloses the use of biometrics as an alternative to the use of cards² – so that the player need not carry a card – we find that Walker

² Walker’s statement that a slot machine “could also include” a biometrics device could reasonably be read to disclose the use of biometrics in

does not discourage the use of both together. *Cf. In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004) (“the prior art’s mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed.”) Further, Walker teaches that slot machines may utilize two forms of identification, specifically a player identification number or name and a secure password, in order to recognize a player. Walker, col. 6, ll. 56-59. This is consistent with the Examiner’s reasoning that it would have been obvious in the context of financial transfers, including casino gaming, to require two forms of identification such as a card and biometrics. *See* Ans. 11. Accordingly, we do not agree with Appellant’s assertions that the Examiner’s conclusion of obviousness regarding claim 31 is based on speculation, improper hindsight and “tortured reasoning.” *Contra* App. Br. 10; Reply Br. 2.

We sustain the rejection of claim 31 and of claims 4, 6-8, 19, 20, 26, which fall therewith, as unpatentable over Walker, Raven, and Orus.

Claims 3, 32-37, and 40-42

Independent claim 32 recites the step of “said individual player manually actuating said gaming machine to accept non-contact electronic data transmission from a card carried by the player.” Dependent claim 3 depends from claim 31 (which is discussed above) and recites “the player also physically actuates the gaming machine as a separate, added step to activate the machine.”

conjunction with, rather than as a substitution for, cards. Walker, col. 6, ll. 59-61.

The Examiner's conclusion of obviousness was initially based on the finding that Walker discloses that the player manually or physically actuates the gaming machine as a separate step. Ans. 4 (citing Walker, col. 6, ll. 39-61); *id.* at 12 (citing Walker, col. 6, ll. 39-49). In the Response section of the Answer, the Examiner maintains that it is simply common sense to have a physical activation step in conjunction with the use of a contactless card because "a handful of people [with contactless cards] walking around the casino would bring the system to its knees." Ans. 12-13.

We have reviewed the cited portion of Walker and have considered the Examiner's "common sense" position, but we determine that the Examiner's conclusion of obviousness is not supported by adequate articulated reasoning with rational underpinning. We disagree with the Examiner that the system would collapse by merely having people with contactless cards walking within range of a slot machine. For example, the slot machine could be designed to be activated only when the contactless card is within a relatively limited distance from a specific location on the slot machine. As such, we cannot sustain the rejection of independent claim 32, dependent claim 3, and dependent claims 33-37 and 40-42, which depend from either claim 3 or claim 32.

The rejection of claims 21, 22, 38, and 39 as being unpatentable over Walker, Raven, Orus, and Phillips Semiconductors

For claims 21 and 22, Appellant relies on their dependency from claim 31 for patentability. App. Br. 9. As we affirm the rejection of claim 31, we also affirm the rejection of claims 21 and 22.

Claims 38 and 39 depend from claim 32. The Examiner does not rely on Phillips Semiconductors in any manner that cures the deficiency of the

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underlying rejection of claim 32 based on Walker, Raven, and Orus. *See* Ans. 8-9. As such, we also reverse the rejection of claims 38 and 39.

DECISION

The decision of the Examiner to reject claims 3 and 32-42 is reversed. The decision of the Examiner to reject claims 4, 6-8, 19, 20-22, 26, 31 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

JRG

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